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February 17, 2006

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth

Walter D. Cruickshank

Massachusetts Historical Commission

Acting Director

Minerals Management Service

Attn.: Rules Processing Team

381 Elden Street, MS-4024

Herndon, VA 20170-4817

RE: Alternate Energy-Related Uses on the Outer Continental Shelf. **RIN 1010-AD30.**

Dear Mr. Cruickshank:

The Massachusetts Historical Commission (MHC), the office of the Secretary of the Commonwealth, appreciates the opportunity to respond to the Minerals Management Service's (MMS) request for comments on the development of a regulatory program to implement portions of the Energy Policy Act of 2005, Section 388—Alternate Energy—Related Uses on the Outer Continental Shelf, published in the *Federal Register* (70 Fed. Reg. 250 (2005)), on December 30, 2005. MHC's commentary focuses on the "environmental information, management, and compliance" program areas as identified in the request for comments, although our remarks also touch upon all the other program areas and issues: access, operational activities, payments and revenues, and coordination and consultation.

The MHC has interest in the Outer Continental Shelf (OCS). Our ancient and historical populations inhabited these areas prior to the submergence of the land. They relied upon marine resources from these areas to the extent that their lifeways, material culture, settlement patterns, and cosmology were veritably shaped and transformed by proximity to and dependence upon the ocean. Our seafaring peoples, their vessels, and their cargo voyaged and were frequently lost over the OCS. Historic and archaeological findings on the OCS inform understandings of history, cultures, and the ever-changing environment. Projects proposed on the OCS may rely upon or be partially located within Massachusetts waters and lands, affecting historic and archaeological resources in state jurisdiction.

The MHC, the office of the State Historic Preservation Officer, has broad duties in historic preservation to protect the Commonwealth's interest in historic and archaeological resources. MHC has an important role in both state and federal historic preservation laws and regulations, as part of environmental review for proposed projects that seek state or federal funding, permits, licenses, or approvals (16 USC 470f (36 CFR 800)); MGL c. 9, ss. 26-27C (950 CMR 71)). In addition, the MHC is the office of the State Archaeologist (MGL c. 9, ss. 26A-27C (950 CMR 70)). The Executive Director of the MHC and the State Archaeologist both serve on the Massachusetts Board of Underwater Archaeological Resources (MGL c. 6, s. 179). The Massachusetts Board of Underwater Archaeological Resources has particular expertise in underwater archaeological resources, and has been closely involved as an interested and consulting party in reviews of Federally assisted projects. There are other federal laws and regulations that are more generally or more specifically concerned with maritime-related cultural resources.

The granting of private access rights to the public lands of the OCS, including leases, easements, and rights-of-way, are "undertakings" (36 CFR 800.16(y)) that require determinations by MMS in compliance with Sections 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470f (36 CFR

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800)). Consultation with appropriate State Historic Preservation Officers, Tribal Historic Preservation Officers, other consulting parties, and involving the interested public in decision-making, are critical issues that need to be outlined in MMS regulations. Section 110 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470h-2) also requires that MMS should undertake cultural resource surveys to locate, identify, evaluate, nominate, and protect historic and archaeological properties that are eligible for listing in the National Register of Historic Places. Section 110 has other specific requirements regarding the protection of significant historic and archaeological properties on federal property.

There is a considerable corpus of regulatory and guidance documents published by the Advisory Council on Historic Preservation (ACHP) and other federal agencies for federal agency compliance and for cultural resources management on federal lands. MHC's advises that MMS should seek direction from the ACHP for developing counterpart regulations, guidance documents, and policies for cultural resource management of the OCS, taking into account other federal programs, regulations, and guidance documents, and the literature developed for training and education of historic preservation and archaeological professionals. The ACHP regulations (36 CFR 800) provide a flexible approach to information gathering needs. The specific information needs for considering impacts and for consulting to develop feasible alternatives to avoid, minimize, or mitigate adverse effects to significant cultural resources, vary depending on the nature and extent of the undertaking, the interests of the constituencies involved in consultation, and the characteristics of the cultural resources that may be affected. Generally, the scopes of identification and evaluation surveys, and the documentation required for consultation and decision-making, are developed on a case-by-case basis, in consultation with the state and tribal historic preservation officers and other knowledgeable individuals, assisted by capable cultural resource management professionals contracted to provide information to guide the federal agencies and the applicants (project proponents) through the process. A task force of experienced cultural resource management professionals from the public and private sectors, assembled to consider this aspect of the MMS process, may be a practical approach to address the specific questions posed in the request for comments.

The consideration of feasible and practical alternatives to activities and policies that conflict with the preservation of non-renewable cultural resources should be an important part of MMS regulations and policies. Regulations and policies proposed by the MMS should be consistent with existing federal historic preservation laws and regulations, and should be tailored to strengthen protections for significant cultural resources as public heritage of the nation. In addition, the educational and interpretive values of OCS cultural resources should be fostered for the public. Available tools, such as designations of National Marine Sanctuaries, could be applied to reserve and protect areas of the OCS that contain significant historic and archaeological resources.

As you are no doubt aware, vast lands that are now submerged by the Atlantic Ocean were once exposed and populated by ancient Native Americans. Over twelve-thousand years ago, when the earliest known Native American explorers were in New England, the islands of Nantucket, Martha's Vineyard, and the Elizabeth Islands were hills on an expansive coastal plain that extended in some places fifty or more miles east of the present coastline. The rise of sea levels from melting glaciers submerged these formerly exposed land areas of the OCS. As the glaciers retreated and sea level rose, habitats changed considerably. Many species of land and marine animals were displaced or became extinct, while other species came into the region. The processes and effects of environmental and cultural changes were protracted and complex, as paleoecological and archaeological studies have just begun to identify and document.

Native American groups adapted to this ever-changing environment, moving farther inland from the encroaching ocean, but retaining their coastal orientation for settlement, subsistence and transportation.

As plant and animal species became more or less available, Native Americans adapted their tools and tool forms, and their gathering, hunting, and fishing techniques. As the habitable land area decreased with the rising waters, it is likely that social organization and certain social practices also changed creatively. The coastal zone in Massachusetts contains the state's highest terrestrial archaeological site density for the ancient and early historical periods. It is expected that lands now submerged also contain evidence for settlement and land use prior to inundation. In certain favorable circumstances, organic materials (e.g., wood or matting used for *wetuomash* (houses); wood and bone implements; wooden *mussoonash* (dugout canoes); clothing made of textiles and hides; etc.) might be better preserved at submerged ancient sites than is ordinarily the case at terrestrial sites.

In historical times, of course, Southern New England was explored and settled by ocean-going Europeans in the late 16th and early 17th centuries, drawn here by the region's prodigious marine animal resources. Many ships and lives were lost. Evidence from historical period shipwreck sites provides a window into the past, and helps to fill out many details lacking in documentary accounts or which cannot be ascertained from curated museum collections. Shipwreck sites and other kinds of historical period, maritime-related archaeological resources are part of the public trust as well. When these public resources are targeted by profit-oriented salvagers, important artifactual and scientific evidence from these sites could be lost—sold off and disbursed into private hands, rather than retained in an appropriate museum or curatorial facility for the public to enjoy.

Massachusetts also has many surviving historic ships and maritime-related structures and features (e.g., lighthouses, shipyards, wharves, seawalls, etc.) many of which have been listed in the National Registers of Historic Places, and all of which have an important place in the Commonwealth's historic cultural environment. Many Local and National Register Historic Districts, and historical properties, have a maritime setting as a significant character-defining feature. The visual effects of proposed OCS projects on historic districts and properties must be taken into account in scoping environmental review documents. MHC recommends that MMS regulations include consideration of visual effects on historic districts and properties when considering alternative locations and designs of proposed alternative energy facilities to avoid or minimize adverse visual effects. Siting considerations should emphasize selecting project locations that would avoid or minimize direct and visual adverse effects to significant historic and archaeological properties.

In some places, human remains may be present on the OCS, and these locations are considered to be graveyards by affiliated descendants and the public at large. Disrespectful interference with these last resting places is viewed with abhorrence by the nation, and even internationally when remains of citizens from other countries are involved. Federal and international maritime law and diplomatic agreements govern the protection of human remains and lost vessels, both civilian and military, on the OCS. MMS regulations should be consistent with the spirit and letter of federal and international law and agreements about these matters.

Experience and formal training are required to properly investigate and record archaeological sites, in such a way as to not adversely affect fragile contextual relationships that are vital for understanding their significance and history. Great skill and attention to appropriate treatments and materials are required to properly preserve artifacts and samples recovered from marine environments. Ancient and historic period Native American sites; historical period, underwater archaeological resources; historic ships; and, maritime-related structures and features—these are all non-renewable cultural resources that cannot be “restored” if impacted. Certain activities in leases, easements, and right-of-ways, and looting, vandalism, and poorly designed and unskillfully executed archaeological exploration and salvage projects can adversely affect cultural resources.

As part of the Coordinated OCS Mapping Initiative (Section 388b of the Energy Policy Act of 2005), MMS is required to undertake a survey and assessment of the OCS that are likely to contain submerged cultural resources. MHC recommends using state-of-the-art archaeological and geotechnical sciences and technologies, implemented by experienced professionals who are versed in recent, relevant literature and findings reported to State and Tribal Historic Preservation Offices, state archaeologists, state underwater archaeology commissions, national and international archaeological organizations, academics, avocationalists, and federal agencies (such as the US Navy, NOAA, the Coast Guard, the US Army Corps of Engineers, and agencies in the Department of Interior). While a pioneering reconnaissance archaeological survey of the OCS oil and gas leasing areas from the Bay of Fundy to Cape Hatteras was undertaken decades ago and still retains some conceptual utility, that 1979 report is no longer considered to be adequate or reliable at finer resolutions required to evaluate specific locations.

Recent archaeological survey efforts have benefited from meteoric advancements in discovery and mapping technologies, new discoveries, and more refined understandings of the geological and marine processes of inundation and post-inundation effects on submerged lands that contain cultural resources. Advances in geology and technology (using remote sensing, underwater equipment, core sampling of substrate, and computer modeling) have been successfully applied by archaeologists to identify land under ocean that may hold artifact deposits and intact archaeological features. Not all submerged lands will contain preserved evidence of ancient Native American sites and historical period shipwrecks. The dynamic nature of the ocean, including submergence, erosion, and redeposition processes have to be taken into account to identify specific areas that are likely to have intact archaeological sites in and on submerged lands.

As with all vulnerable cultural resources, sensitive cultural resource locational data should be confidential, and access to the data should be carefully considered and strictly limited to protect the resources from looting, vandalism, and desecration. Means to disseminate data to state, federal, and tribal agencies, interested scholars, and the public should take into account the purposes and the variable qualities and detail of data required by these various constituencies.

Royalties from leases, easements, and right-of-ways that affect significant cultural resources should be more directly applied to fully fund permanent and on-going historic preservation and land conservation activities at the state level. Currently, OCS oil and gas royalties are not appropriated in amounts to fully fund the Historic Preservation Fund and the Land and Water Conservation Fund. These programs have been underfunded from their inception, contrary to the spirit and promise of the legislation that established the process. The full implementation of federally-mandated historic preservation and land conservation programs by the states, overwhelmingly popular with state residents, is frustrated, curtailed, and precluded for lack of funding. A mechanism to provide direct payments to state historic preservation and land conservation programs should be included in the regulations and in the OCS royalty agreements.

Thank you once again for providing the opportunity to provide comments. If you need further information or have any questions concerning these comments, please contact Edward L. Bell of my staff.

Sincerely,



Brana Simon
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Deputy State Historic Preservation Officer
Acting Executive Director
Massachusetts Historical Commission

xc:

Advisory Council on Historic Preservation

National Conference of State Historic Preservation Officers

National Association of Tribal Historic Preservation Officers

National Association of State Archaeologists

Massachusetts Commission on Indian Affairs

Wampanoag Repatriation Confederation

Cheryl-Andrews Maltais, THPO, Wampanoag Tribe of Gay Head (Aquinnah)

Secretary Stephen R. Pritchard, Massachusetts Executive Office of Environmental Affairs

Massachusetts Coastal Zone Management

Massachusetts Board of Underwater Archaeological Resources

Massachusetts Division of Conservation Services

Society for American Archaeology

Society for Historical Archaeology